D.B. CIVIL WRIT PETITION NO.6515/2005
(J.K. Industries Ltd. Vs. UOI & Ors.)

Date of order : 12.9.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Rajendra Mehta, for the petitioner.
Mr. V.K. Mathur, for UOI.

On the request of the learned counsel for the parties, the petition has been heard on merit.

The petitioner is a private limited company and is engaged in manufacturing of Tyres, Tubes and flaps falling under Chapter 40 of the first Schedule to the Central Excise Tariff Act, 1985. It uses carbon black as one of its inputs for its final product. On the purchase of such inputs, the petitioner company is entitled to avail modvat credit to the extent the duty has been paid thereon by the seller in terms of Rule 57-A/57-AB as was amended from time to time.

During the relevant period, from January, 1999 to June, 2000 brake up of which has been stated in the impugned order passed by the adjudicating authority, the assessee has purchased carbon black as inputs for the manufacturing of its end product from Ms. Murablack India Ltd. Tarapur stated to be a

hundred percent Export Oriented Unit (for short "EOU") on the basis of invoices issued by the seller to the petitioner showing the Duty paid by the seller in respect of carbon black sold by the petitioner-company. The petitioner availed the modvat credit on the sum stated in such invoices to be paid as a Duty by the seller during the aforesaid period. The fact that the seller has actually paid the duty shown in the invoices is not in dispute.

It appears that said Ms. Murablack India Ltd. had sold the carbon black manufactured by it in domestic trade area without following the regulatory directions applicable to it as hundred percent EOU, which led to the initiation of proceedings against said Ms. Murablack India Ltd. for levy and recovery of full duty paid on the goods in question manufactured by it. We are not concerned with said part of controversy.

It further appears that incidental thereto the various show cause notices were also issued to the petitioner-company. The thrust of the show cause notices issued to the petitioner-company primarily appears to be that since the seller was hundred percent EOU and was not eligible to avail cenvat facility because of Rule 100-H (2) of Central Excise Rules, 1944, then in force, but the said seller has availed the modvat/cenvat facility under the Rules of

1944 with effect from 1.10.1998 and as the said seller wrongfully availed the cenvat credit in respect of goods sold to the assessee, availing of the cenvat credit towards payment of duty on the goods purchased by the assessee was irregular and no cenvat credit in respect of Duty which has not been paid by the seller and which was not leviable to be availed by the seller, the assessee too could not have availed modvat credit in respect thereof. Other grounds for issuing notice to the assessee was stated to be that the seller unit could not have issued invoice under Rule 52-A and therefore, on the basis of invoice under Rule 52-A no modvat/cenvat could have been availed by the assessee and for such invoice ought to have been issued under Section 100-E by hundred percent EOU on the basis of which modvat credit could have been availed by the assessee.

The assessee in its reply has taken the stand that it has availed the modvat credit only in respect of the Duty actually paid by the seller and it has not availed any undue advantage. The fact that the assessee was entitled to avail modvat credit on Duty paid on the inputs used by him in the manufacture of its end product is also not in dispute. It was pointed out that whatever irregularities or breaches are alleged to have been committed by Ms. Murablack India Ltd., which is hundred percent EOU can result in befalling of the consequences thereof on the said

manufacturer. But for any irregularities or default committed by Ms. Murablack India Ltd., the person who is otherwise entitled to avail modvat credit in respect of inputs used by him on which the Duty is leviable to the extent the Duty is actually paid thereon by the seller as evidenced by the invoice issued by him, the same cannot be withdrawn. The fact that the seller has issued invoice under Rule 52-A and not in 100-E is also not a breach committed by the assessee but the issuance of the invoice was under the control of the selling person and therefore, so long as the assessee has fulfilled all conditions, which were required to be fulfilled by him which was in his domain, the modvat credit cannot be recalled on mere technical grounds.

So far as the first contention is concerned that no part of the modavt credit availed by the petitioner – assessee related to any cenvat credit availed by the seller unauthorizedly is now no more in dispute. It is now the common ground that the Duty in respect of which the assessee has availed the modvat credit was Duty actually paid by the selling unit. Albeit according to the respondents he has indulged into domestic area trading without following due procedure laid down in that regard under the terms and conditions under which he availed the status of hundred percent EOU and he was liable to pay full Duty on the goods removed by him to the domestic market.

However, the principal ground which prevailed with the adjudicating authority was that because of non-compliance of certain provisions by the seller Ms. Murablack India Ltd., the seller was required to pay higher Duty. The adjudicating authority also agreed that the clearance made by Ms. Murablak India Ltd in DTA without permission of competent authority cannot be made a ground of denial of credit to the assessee. However, the adjudicating authority found that since the status of suppliers of inputs is that of hundred percent EOU, firstly, this under the modvat scheme, the modvat credit cannot be availed by issuing invoice under rule which is not applicable to it and consequently in terms of Rule 100 H(2) of erstwhile Central Excise Rules 1944 provisions contained in Rule 57-A did not apply to excisable goods purchased and sold out by hundred percent export oriented unit or undertaking. On this premise, it founded its decision which reads as follows :

> "In view of this unambiguous position of statue, the said M/s Murablack were not entitled to operate under Modvat scheme as envisaged under Rule 57 A of erstwhile Central Excise Rules, 1944. I further find that proviso to Rule 57A (6) ibid casts an obligation upon the noticee and this vital requirement has been ignored by him. Besides this what is of importance is that the noticee is an established unit working under Central Excise Act, 1944 for quite some time and is supposed t be fairly acquainted with the Rule & procedures. Explanation appended to Rule 173Q ibid enjoins upon the noticee to take all reasons steps to ensure about the identity & address of the supplier. Had it been done so then

> vital information would have been available with the assessee and future complication could have been avoided. Since the assessee has not take steps to ensure the cleanliness of the source of benefit (modvat credit) & he has chosen to do so at the cost of his own peril. It cannot denied that if the source is tainted, the benefits flowing from it would also be tainted. This position emerges notwithstanding the fact that the invoice of the subject clearance were issued under a Rule which was not available for operation to the supplier of the goods i.e. M/s Mura Black. Technically of the issue apart the case of the noticee fails on the substance. The invoice issued by M/s Murablack can not be a acceptable document for passing on modvat credit in as much as the said unit itself was working under modvat scheme in gross violation of laws laid down for the purpose."

With all these findings, the adjudicating authority held that the petitioner availed the modvat credit during the period January, 1999 to June, 2000 irregularly which is recoverable under Rule 57-AH (1) read with Section 11-A of the Central Excise Act, 1944 and being in violation of the prescribed Rules penalty under Rule 173Q is also imposable.

Thus, apart from disallowing the modvat credit availed during the aforesaid period on carbon black utilized by the assessee as inputs as manufacturer of its own end product which he purchased from Ms. Murablack India Ltd. was disallowed and the penalty of Rs.10 Lacs was imposed.

The aforesaid order was first subjected to appeal albeit after expiry of limitation and the

appeal having been rejected being barred by time and the condonation of delay of period exceeding 30 days, being beyond the jurisdiction of Commissioner (Appeals), this petition has been preferred here challenging the order of Adjudicating Authority directly.

While the respondents have raised objection as to the availability of the alternative remedy which the assessee has failed to avail and because of that this petition ought not to be entertained, we first consider this objection to the exercise of the extra ordinary jurisdiction in the facts and circumstances of the present case.

Undoubtedly, the ordinary rule is that when alternative remedy is available and assessee has failed to avail the same within the period prescribed, this Court would not ordinarily exercise extra ordinary jurisdiction to get over the bar of limitation. However, in a given set of circumstances whether it results in patent violation of constitutional provisions and resulting in substantial failure of justice and no fault can be laid with the petitioner, the justice of case may demand exercise of extra ordinary jurisdiction. However, it will depend upon the special facts and circumstances of the given case.

In the present case, the petitioner has placed in detail the reasons on account of which the appeal against the adjudicating order could not be filed in time though all possible steps were taken and draft was also prepared and was to be filed within limitation yet could not be filed under a genuine misapprehension due to fault in communication through electronic communication system. It was stated by the petitioner that the impugned order dated 30.11.2004 was received by the petitioner at Kankroli on 13.12.2004 and the said order was sent in Original to the petitioner's Legal Advisor at Delhi vide letter dated 14.12.2004 with all relevant papers. The legal advisor to the petitioner Shri S.C. Arora engaged the services of Shri B.L. Narasimhan as counsel for drafting of the appeal. The appeal was drafted by the counsel of the petitioner and the soft copy of the appeal along with stay application was e mailed to Shri Arora in Delhi who in turn sent soft copy of the appeal along with the stay application on e-mail to Senior General Manager (Commercial) of the petitioner's Company on or about 13.1.2005. The said Senior General Manager (Commercial) of the company was on leave from 11.1.2005 to 17.1.2005. In his absence his personal assistant opened his computer to check his mails but said e-mail some how got deleted from the computer system of Senior General Manager (Commercial) and did not reach him at all.

In the aforesaid circumstances while the legal advisor at Headquarter at Delhi who had sent the drafted appeal along with stay application on e-mail to the official of the Company at Kankroli for filing the same believed bonafide that appeal has been filed in time. In the circumstances, on enquiry being made from Shri S.C. Arora by another official he got the message that the appeal has been filed within time. The same answer was given to the Superintendent, Central Excise, Kankroli when he enquired from the company officials whether any appeal has been filed against the order dated 30.11.2004 or not or whether any interim order has been passed on the application. Since, the copy of the appeal and the stay application was not available with Shri C.P. Sharma, Dy. Manager (Excise) who was to deal with matters for its pursuit before the appellate authority, he procured a hard copy of the appeal and the stay application from Shri Arora which was made available to him on 19.3.2005. Thereafter, the petitioner's officials at Delhi and Kankroli remained under the impression that the appeal along with stay application which was prepared in time has been filed in time before the Appellate Authority. It was for the first time when the Superintendent, Central Excise asked the petitioners to produce copy of interim order, if any, passed on the stay application and also to produce copy of the appeal and the stay application with appeal number, the

petitioner came to know on further enquiry on 2.9.2005 that due to deletion of e-mail of the soft copy of the appeal and the stay application sent on or about 13.1.2005, the appeal has actually been not filed. Having come to know about aforesaid incidents, the appeal along with the stay application duly singed was filed and presented on 5.9.2005 along with the application for condonation of delay. However, in terms of Section 35 (1) the Commissioner (Appeals) while observing that appeal could be entertained only if the same is filed within 90 days and having no power to condone the delay, dismissed the appeal as barred by limitation.

In reply to all those averments, the respondents have simply stated that the assessee being in business cannot be said to unaware of the procedure for filing the appeal, therefore, the delay in filing the appeal cannot be condoned.

In the facts and circumstances of the case, it is apparent that the petitioner is not pleading any lack of knowledge for taking steps for filing the appeal within limitation but what really has happened is deletion of soft copy of the e-mail sent to the General Manager (Commercial) to be presented and filed in time which he did not receive due to fault in transmission and therefore, the petitioner remained under belief that the appeal has been filed within

limitation. In these circumstances, the petitioner is deprived from his right of appeal. The power not being vested with the Appellate Authority notwithstanding there being a sufficient cause on account of which the appeal could not be presented within limitation and get the findings recorded by the adjudicating authority reviewed on merit by the higher authorities. In the aforesaid circumstances, we are of the opinion that the remedy should not be lost and the petitioner be not deprived of consideration of his case otherwise resulting in huge liability which if not validly imposed is likely to create great hardship. Therefore, it is a fit case in which extra ordinary jurisdiction should be exercised for considering the case of the petitioner on merit.

At the request of the learned counsel for the parties, we have considered the merits of the case.

From the facts which we have noticed above which led to the Adjudicating Authority to recall the modvat credit availed by the petitioner and consequential penalty for breach of the rules, it is apparent that the foundation of these proceedings is some default or breaches alleged to have been committed by Ms. Murablack in the matter of selling its product in Domestic Market in breach of some regulatory procedural matters, which may have rendered the said manufacturer to higher duty. There is no

allegations of any breach committed by the petitioner. The facts that the petitioner is a purchaser of the goods which are used by it in the manufacture of its end product; that the Duty on the goods sold to the assessee, the petitioner, as stated in invoice received by it and filed alongwith declaration was actually paid by the seller – Ms. Murablack; that the petitioner – assessee has availed modvat credit only in respect of the duty actually paid by the seller; that the seller has issued invoice under Rule 52A in respect of the goods sold to the assessee contained all relevant particulars including Excise Duty paid thereon and declaration required to be made by the petitioner at the time of availing modvat credit before the competent authority were duly made and submitted with invoices received by the petitioner are not the facts in dispute. It also cannot be denied and disputed that so far issuance of invoice in a particular format is concerned, it is in the domain of seller and the buyer has no role in format of invoice issued by the seller.

The burden of order of Adjudicating Authority as noticed by us above is that because Ms. Murablack has committed certain breaches in the matter of issuing invoice in form No. 52 A instead of Rule 100 E and has sold the goods in Domestic Trade Area in breach of conditions of 100 percent EOU status, the petitioner as its buyer must carry the burden of its

tainted legacy. In coming to this conclusion, it appears that the assessing authority has totally ignored that while sale by a manufacturer, who pays Excise Duty and purchases of those goods as inputs by another manufacturer, who is yet to manufacture its goods, is the only substantive requirement of claim to avail cenvat credit of Duty paid on inputs by the users thereof. Buyer and Seller both are independent of each other at tax entities and cannot be held liable for each others breaches. Under the taxing statutes, a person can be held liable for consequences of acts and omissions committed or attributed to himself if such acts or omissions are in breach of some obligation of the assessee and not for others until and unless it is so expressly provided under the provisions of law by treating the other person as an agent of the former. Else for the breaches and omissions committed by person 'A' its consequences cannot befall on assessee 'B' merely for the reasons of the breaches committed by 'A'.

It may be stated that the reference to Rule 100-H for opining that the goods manufactured by the hundred percent EOU are not subject to provisions of Rule 57-A or 57 AB is wholly misconceived. It ignores the basic elements of scheme of modvat credit. The basic elements of modvat scheme, as emanating from Rule 57A, is that Modvat credit is to be availed by the buyer of the goods, and not by the seller of the

goods, which the buyer intents to use as inputs for manufacture of another goods by it or in other terms the modvat credit is for the use of excisable goods in the manufacture of another excisable goods and is not available at any stage earlier than that. May be that a seller of a particular commodity is entitled to avail modvat credit in respect of inputs used by him in the manufacture of its end product and the duty paid by him on the inputs he can avail the benefit thereof while liability to pay excise duty arise on removal of end products manufactured by him but to a given transaction the modvat credit scheme does not apply to a seller.

Rule 57-A envisages that credit of any Duty of Excise or the Additional Duty under Section 3 of Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification paid on the goods and used in the manufacture of the said final products, which are referred to as inputs can be availed by such manufacturer. It also envisages that the credit of specified Duty allowed under sub-rule (1) shall be utilised towards payment of Duty of Excise leviable on the final products, whether under the Excise Act or under any other Act, as may be specified in the notification issued under sub-rule (1) and subject to provisions of this section and the conditions and restrictions, if any. Apparently, if one keeps in view the basic element of availing

modvat/cenvat credit in respect of use of any inputs, the provisions of Section 100-H (1) and (2) can only be referred to modvat credit which otherwise would have been availed by a manufacturer but cannot be availed by hundred percent EOU. Rule 100-H reads as under :

> "Rule 100H. Exemption from certain provisions. - (1) The provisions contained in Rules 43, 44, 45, 46, 47, 52, 52A, 53, 54, 56B, 57AB, Chapter VII, Chapter VIII, Rules 223A, 224, 228 and 229 shall not apply to a manufacturer who produced or manufactures excisable goods in a free trade zone.
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> (2) The provisions contained in Rules 43, 44, 45, 46, 47, 52, 52A, 53, 54, 56B, 57AB, Chapter VII, Rules 223A, 224, 228 and 229 shall not apply to excisable goods produced or manufactured by a hundred per cent export-oriented undertaking."

Apparently, perusal of aforesaid Rule goes to show that where a manufacturer is otherwise entitled to avail modvat scheme that is to say taking credit of the duty paid on the inputs used by him in the manufacture of its end product and utilized that modvat credit, is precluded from utilizing such modvat credit by dint of provisions of Rule 100H (2) if he is a hundred percent EOU. The same inhibition applies to a person who produces and manufactures excisable goods in a free trade zone. The reasons for this provision are not far to seek. The modvat credit can only be

availed by a manufacturer who uses inputs in dutiable goods and not on exempted goods. Since a hundred percent EOU is exempted from duty in respect of manufacturing end products which is expected to be exported out of India. In other words exemption is part of providing export promotion incentives. A specific provision has been made that he cannot avail the benefit of modvat credit.

However, this inhibition does not apply to the person purchasing the articles manufactured by hundred percent EOU and sold in the domestic area when the clearance of the same is on payment of Duty and such duty has actually been paid. To the buyer, who is not hundred percent EOU, on purchase of end product manufactured by hundred percent EOU as his inputs for manufacture of certain goods by him, Rule 100H can have no application. His case is governed under Rule 57-A and 57AB as the case may be. Therefore, the very foundation of show cause notice that for the goods manufactured by hundred percent EOU Ms. Murablack, no modvat credit could be availed by the assessee if he has purchased the goods manufactured by the said unit, on which duty has been paid on its clearance in the domestic trade area is unsustainable. This line of contention is not otherwise pursued by the respondents. The reasons adopted by the adjudicating authority suffers from patent error to the extent it seeks to penalize the petitioner for alleged default

committed by M/s. Murablack by relying upon Rule 100H of the Central Excise Rules, 1944.

This takes us to consider the only surviving reason for denying the modvat credit to the petitioner that the invoices received from the seller which were under Rule 52A and not under Rule 100E.

Learned counsel for the respondents urged that Rule 100-E provides for issuance of invoices by the hundred percent EOU and lays down the manner and mode under which the invoice is to be prepared by such unit. Coupled with this provision, learned counsel for the respondents urged that since under Rule 57G, the petitioner was intending to avail modvat credit in respect of Duty paid on inputs used by him, he was required to furnish along with declaration a copy of invoice issued either under Rule 52A or Rule 100E. Since the petitioner was a buyer from hundred percent EOU, the invoice required to be submitted by him ought to have been issued under Rule 100E and not under Rule 52A. Admittedly, the invoice in the present case was issued under Rule 52-A, therefore, the adjudicating authority was justified in denying modvat credit to the petitioner on the basis of an invoice issued under Rule 52A.

On the other hand, it was contended by the

learned counsel for the petitioner that Rule 57G does not specify in which case which invoice is to be produced for availing modvat credit. What is substance of provisions of sub-rule (3) is that the user of inputs intending to avail modvat credit under Rule 57A or 57B must produce the invoice issued by the manufacturer of the inputs showing Duty levied and paid on the input received by the manufacturer claiming modvat/cenvat credit. Whether the invoice is issued under Rule 57A or 100E is immaterial, inasmuch as the format and the manner of the invoice to be issued is within the domain of manufacturer and not within the control of buyer. Therefore, the requirement of issuance of the invoice under the provisions of the Rules is that he must issue the invoice to the buyer under Rule 52-A or 100-E, as the case may be, but since it is not within the domain of buyer the manner and method in which the invoice is to be prepared by the seller if he (the buyer) produces the invoices received showing the actual payment of Duty on inputs received by him, the conditions under sub-rule (1) of Rule 57-G stands complied with. (Learned counsel for the petitioner states that reasonably with the construing of sub-rule (1) of Rule 57-G, the stand of the petitioner is more plausible and accords with the scheme). He further points out that the purpose of modvat credit scheme is to rationalize the cast structure of the manufactured items by shedding of the weight of the double taxation

on various stages of production due to levy of Duty. If all the conditions necessary for availing modvat credit have been fulfilled the same cannot be denied merely on technical defects in procedure, fulfillment of which is beyond the control of the buyer claiming to avail benefit of modvat credit in terms of Rule 57A. He further invites our attention to sub-rule (11) of Rule 57G, which was inserted vide notification dated 9.2.1999, and which covers almost the entire period, in support of his contention that for mere technical breach availing of modvat credit, should not be denied and where the Duty due on the inputs has been paid and such inputs have actually been used or are to be used in the manufacture of final products of the recepient, the availing of modvat credit should not ordinarily be denied. Sub-rule (13) of Rule 57T and sub-rule (11) of Rule 57G simultaneously put on the statute book by notification dated 9.2.1999 are pari-meteria in their expression.

It has been brought to our notice a Bench decision of this Court rendered in DB Central Excise Appeal No.19/2005 in case of UOI Vs. M/s. Aditya Cement & Ors., decided on 9.11.2005 in which provisions of sub-rule (13) of Rule 57T has been considered. Construing the said provisions and noticing that the like provisions have been inserted in Rule 57G by inserting sub-Rule (11) by the very same notification, this Court concluded that coupled

with the requirement to pass reasoned order, the aforesaid provision makes it abundantly clear that modvat credit should not be denied merely on technical and procedural breach if the substantial conditions about the actual payment of duty on the inputs/capital goods and the same has been used by the manufacturer in manufacture of final goods in his factory are satisfied.

Having given our careful consideration to the rival contentions of the parties and considering the fact as noticed by us as detailed above, we are of the opinion that the principle enunciated by this Court in UOI Vs. M/s. Aditya Cement & Ors. (supra) aptly governs the facts of this case also. There is no dispute about the fact that the assessee has used the inputs in question for the manufacture of final goods in its factory and he has availed the modvat credit only in respect of the Duty actually paid by the seller in respect of such goods. The assessee has fulfilled all the requirement which was within his domain. Therefore, no fault can be laid on his part for denying modvat credit in respect of the Duty paid on inputs used by him for the defaults if any committed by the seller in respect of selling of his end product in the domestic market and for breach the petitioner cannot be associated with. It is not that the hundred percent EOU are absolutely debarred from entering the domestic market under the scheme. After

fulfillment of certain conditions the hundred percent EOU are also permitted to enter the domestic market. Therefore, if a buyer purchases goods from hundred percent EOU, it cannot be presumed that it is purchasing the goods from a unit which is acting in breach of these obligations. Under the aforesaid circumstances, the benefit of sub-Rule (11) of Rule 57G extends to the petitioner on admitted facts.

The Court also opined in the Aditiya Cement's case (supra) that proviso to sub-rule (13) of Rule 57T or for that matter of sub-rule (11) of Rule 57G confers powers coupled with duty on the concerned officer not to deny modvat credit, once condition for such availing is shown to exist in its relaxation as per Rule 57T or 57G itself.

Incidentally, in the aforesaid case, the assessee was sought to be denied the benefit of modvat credit inter alia on the ground that endorsement which have been signed on the papers to be submitted by the assessing authority were not signed by the appropriate authority but by his subordinate. Considering that aspect of the matter the Court held that:

> "what is being done in the office of Central Excise is not within the domain of assessee. The business in the office is within the control of taxing authority and if any authority defaults on its part to

> properly authenticate the papers submitted, its consequences cannot fall on the assessee if other conditions are satisfied namely payment of duty on the inputs/capital goods, the actual use of goods brought into the factory in the manufacture of end product by the assessee."

By the parity of reasoning when the manner or mode of issuing of invoice is within the control of seller upon which the assessee – buyer has no control, he cannot be punished for not issuing invoice properly which remain the only cause which can apparently be put forward by the revenue and which has actually been put forward by the revenue for denying modvat credit.

In this connection, it will not be out of place to mention here that soon after the insertion of sub-rule (11) of Rule 57G and sub-rule (13) in Rule 57T, a circular was issued by the Central Board of Excise on 23.2.1999 empowering the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer to allow credit of duty paid on inputs/capital goods ignoring minor procedural lapses in filing the declaration or in the invoice/document based on which credit is to be taken. The said Circular reads as under :

> "The Assistant Commissioner, before issuing show cause notice for wrong availment of Modvat Credit by the assessee on any procedural grounds, shall conduct enquiries with regard to duty paid nature of the goods at the suppliers and, ensure that necessary

> information as mentioned in the Notification are available on the invoice and satisfies himself whether the goods have been used or are intended to be used as contemplated in the Modvat rules. In case the assessee's invoice contains the details viz. Description of goods, assessable value, name and address of the factory or warehouse where the goods are to be received, and if the assessee has filed a declaration as contemplated in the Modvat rules, the Assistant Commissioner having jurisdiction over the factory would allow the credit of duty so paid after making enquiries as above."

The circular also emphasizes that it should hereinafter be ensured that show cause notices are not issued for procedural lapses as mentioned in the Notification without making proper enquiries. Whereever the Assistant Commissioner, after making due enquiry is satisfied that the modvat credit availed by the assessee is incorrect, adjudication proceedings in the normal course should be initiated. Efforts, however, should be directed towards reduction of litigation.

Considering the aforesaid notification, this Court in another Bench decision in case of UOI Vs. M/s. Grasim Industries Ltd., reported in 2006 (2) WLC (Raj.) 552 has held in para 22 as under :

> "Significantly in para Nos. (2) and (3) of the Circular the Board of Excise & Customs clearly indicated that Show Cause Notice to withdraw Modvat credit by the manufacturer on inputs and

> capital goods used in manufacturing of end product ought not to be issued for procedural lapses without making proper enquiries with regard to duty paid, nature of goods at the suppliers and, ensure that necessary information as mentioned in the Notification are available on the invoice and satisfies himself whether the goods have been used or are intended to be used as contemplated in the Modvat Rules. In case the assessee's invoice contains the details viz., description of the goods assessable value, name and address of the factory or warehouse where the goods are to be received, and that duty has been paid on such goods then merely because the assessee has failed to submit declaration as contemplated in the Modvat Rules or furnished incomplete declaration then for such procedural lapses in furnishing complete details in declaration or delayed declaration modvat benefit, ought not be withdrawn. It mandates not to issue show cause notice for withdrawing MODVAT credits availed by any manufacturer without conducting inquiries and satisfying that the Modvat credit availed by the assessee does not satisfy itself the substantive conditions. Adjudication proceedings in the normal course should not be initiated and show cause notice for withdrawal of modvat credit benefits be not issued lightly on technical grounds."

Significantly, the aforesaid Circular of the Board makes it abundantly clear that merely on any defect in the invoice, the modvat credit which is otherwise available to the manufacturer ought not to be denied on the basis of that defect. Since we have noticed that the only surviving contention of the revenue was the defect in the format of invoice issued by the selling manufacturer and no other defect as such has been found for availing of the modvat credit,

therefore, on the anvil of the aforesaid Circular of the Board also, the show cause notice issued by the respondents for withdrawing modvat credit on the alleged defects in the issuance of the invoice under a wrong rule was itself an act contrary to the Boards directives.

Be that as it may, as we have found that the petitioner has fulfilled all the conditions which were required to be fulfilled by him to avail the modvat credit and the modvat credit availed by him in respect of carbon black purchased from M/s. Murablack which is a hundred percent EOU cannot be withdrawn.

Consequently, the impugned adjudicating order dated 30.11.2004 cannot be sustained and is accordingly quashed. Consequently, the demand created against the petitioner by order dated 30.11.2004 also fails. The writ petition is allowed.

No order as to costs.

(GOPAL KIRSHAN VYAS, J) (RAJESH BALIA, J)

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